Office-Supreme Court, U.S.
FILED
FEB 11 1966
JOHN F. DAVIS, CLERK

No. 1012

In the

Supreme Court of the United States

OCTOBER TERM, 1965.

THE FIRST NATIONAL BANK OF WAUKEGAN as Trustee under Trust No. 616 et al., JOSEPH J. DROBNICK and MARK J. DROBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

JOSEPH J. DROBNICK, *pro se.*
MARK J. DROBNICK, *pro se.*
415 Madison Street
Waukegan, Illinois

The Scheffer Press, Inc., 118 South Clinton Street, Chicago, Illinois

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No.

THE FIRST NATIONAL BANK OF WAUKEGAN as Trustee under Trust No. 616 et al., JOSEPH J. DROBNICK and MARK J. DROBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

Petitioners, Joseph J. Drobnick and Mark J. Drobnick, respectfully pray that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, Second District and the Order of the Supreme Court of Illinois denying the petitioners petition for leave to appeal.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court second District is reported in full in 61 Ill. App. 2nd 78 and is

appended to Appendix "A" in full in this petition. A timely petition was filed with the Illinois Supreme Court requesting leave to appeal but such petition was denied without opinion, see Appendix "B".

JURISDICTION.

The judgment of the Illinois Appellate Court Second District was entered on the 9th day of July 1965 and the Petition for Rehearing which was filed in due time, was denied on July 31st, 1965. A timely petition for leave to appeal was filed with the Illinois Supreme Court and was denied on November 17th, 1965. The jurisdiction of this Court is further invoked under 28 U. S. C. ¶1257 (3). The jurisdiction of this Court is further invoked under 28 U. S. C. A. 1358. Further the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs (28 U. S. C. A. 1331). As the valuation witnesses for the landowner testified the value of the land taken and damages was in the sum of $14,500.00 (Abst 56, 57, 58).

QUESTION PRESENTED.

Can a State take private property from an individual citizen by the Court giving legal instructions to the jury which are so prejudicial that the legal effect was to take the case from the jury and order a directed verdict for the State and yet comply with the due process clause of the 14th Amendment to the United States Constitution?

Constitutional Provisions.

The only constitutional provisions, treaties, statutes, ordinances or regulations involved is the Fourteenth Amendment to the Federal Constitution.

Statement of the Case.

Part of the funds and money used to pay this condemnation judgment in this case comes from the Federal government as Belvidere Road is a Federal Aid Road No. 21 and Federal Aid Project No. 21 (Abst 2-18).

The Department of Public Works and Buildings of the State of Illinois filed a petition to condemn land on the 6th day of September, 1957 designated herein as Tracts 34 and 34A. The State also filed a Quick Take Motion and deposited the sum of $4375.00 with the Clerk of the Court for the quick taking of the fee (Abst 41, 42). On February 28th, 1964 at the trial of the cause the jury rendered a verdict of $1700.00 for land taken (Abst 39-43).

During the course of the trial, the State tendered and Trial Court gave legal instruction P-4 to the jury which reads as follows:

> "In arriving at this verdict it is not proper for you to simply average or *compromise* the testimony of witnesses on the question of land values and damages to remainder, if any. However this does not preclude you from bringing in any verdict that is within the range of the testimony in this case".

REASONS FOR GRANTING WRIT.

The 14th Amendment to the United States Constitution provides that no State shall take life, liberty or property without due process of law. Yet the State Court over specific objections gave the State's legal instruction P-4 which is so prejudicial that in legal effect the case was taken from the jury and a directed verdict was ordered for the State.

Instruction P-4 reads:

> In arriving at this verdict, it is not proper for you to simply average or compromise the testimony of witnesses on the question of land values and damages to remainder, if any. However this does not preclude you from bringing in any verdict that is within the range of the testimony of this case (Abst 80).

This instruction argues to the jury that they are to go to either the high or low figure but no figure that is in between or in the middle range. Juries never bring in a high verdict in a condemnation case. So actually the instruction argues to the jury to bring a directed verdict for the State. The giving of this instruction further caused unfair trial so that the verdicts rendered and the judgments entered thereon do not award to the Petitioners the just compensation which the law requires.

Conclusion.

For the foregoing reason it is respectfully requested that this petition for a writ of certiorari be granted.

Respectfully submitted,

JOSEPH J. DROBNICK, *pro se.*
MARK DROBNICK, *pro se.*
415 Madison Street
Waukegan, Illinois.

APPENDIX "A".

OPINION OF THE APPELLATE COURT.

ABRAHAMSON, *P. J.*

The Department of Public Works and Buildings filed a petition on September 6, 1957 in the Circuit Court of Lake County to condemn five adjoining lots, and part of a sixth, owned by appellants. The Department filed a motion for an immediate vesting of title pursuant to the Eminent Domain Act and three appraisers were appointed by the Court to make a preliminary estimate of just compensation. On September 12, 1958 the Department's motion was granted and a preliminary finding that $3,500.00 constituted just compensation was entered by the Court. The Department deposited that amount and took possession of the property.

On February 25, 1964 the cause went to trial before a jury, which returned a verdict awarding appellants $1700 in full compensation for the condemned lots, and a further finding that adjoining land owned by appellants was not damaged by the taking.

The jury, and the trial judge, inspected the property. Judgment was entered on the verdict and post-trial motions to set aside the verdict and vacate the judgment were denied. This appeal results.

The lots taken comprised a total of 132.39 feet fronting on Belvidere Road, with an overall depth of 125 feet. The property is adjoined immediately on the East by the Chicago, Milwaukee and St. Paul Pacific Railroad, and is located about 1 mile west of the City of Waukegan. The property was bordered on the west by Melody Road, which

provided access into Belvidere Road not only for the lots taken in the condemnation but for the additional property owned by appellants immediately to the south. All the property owned by appellants was, at the time of the vesting of title, and remained, vacant. After the "quick-take" the Department raised the grade of the condemned lots approximately 25 feet above its prior level and constructed a bridge over the adjoining railroad as part of its program to make Belvidere a "Freeway." Access to Belvidere from Melody Road was eliminated but a frontage road about one-half mile west of appellants remaining lots leads into Belvidere.

The Department and the appellants both introduced the testimony of expert witnesses as to the value of the land at the time the original petition was filed. The two witnesses for the Department stated that the property was worth $2000 and $1700 respectively. One of appellants' witnesses testified that the value of the part taken was $9000, with the remainder being damaged by $5500. The owner himself stated that the lots condemned were worth $16,000, with $9000 damage to the remainder. In rebuttal, the Department introduced one of the court-appointed appraisers from the earlier hearing who testified that the part taken was worth $1520 and that the remainder was not damaged at all.

On appeal, the owners first urge that the trial court erred in permitting the Department, by leading questions, to bring to the attention of the jury that its rebuttal witness, one William D. Whyte, had been appointed by the Court to appraise the property at the earlier hearing. The Eminent Domain Act, in providing for the immediate vesting of title in certain instances (Ill. Rev. Stat. 1963, Chap. 47), provides in Section 2.2, paragraph (d) as follows:

> "Such preliminary finding of just compensation, and any deposit made or security provided pursuant thereto, shall not be evidence in the further proceedings to ascertain finally the just compensation to be paid, and shall not be disclosed in any manner to a jury impaneled in such proceedings; and if appraisers have been appointed as herein authorized, their report shall not be evidence in such further proceedings, but the appraisers may be called as witnesses by the parties to the proceedings."

There is no question that the Department had the right, under the statutory provision given above, to call a court-appointed appraiser from the "quick-take" hearing to testify at the final trial. While there are no Illinois cases on the point of disclosing the relation of the witness to the earlier hearing to the jury, we feel it would be good practice if that relation was not disclosed. However, in this case objection was made by appellant not to that disclosure alone, but to the appearance of Whyte at all. That objection was properly overruled and the trial court then informed the jury to disregard any reference to the fact that the witness was appointed by the court to appraise the property. We feel this prompt admonition to the jury corrected any possible error in the proceedings on that point.

Appellants further urge that in view of the fact that the Department was permitted to call Whyte to testify on their behalf, that it was error to refuse to permit another of those appraisors, Jack Williams, to testify for them. However, the record discloses that the proofs had been closed and counsel and court were conferring on instructions when appellant moved to reopen the proofs to introduce the testimony of Williams. It also appears that Williams was available to testify during the trial but

that appellant had not offered him until the proofs were closed and they had rested their case. If he had been permitted to testify, the record indicates that he would have stated that, in his opinion, the property condemned was worth $6500.

It is generally held that once a case has been closed, neither party can, as a matter of right, reopen the proceedings to introduce further testimony. *McEniry* v. *Tri-City Railway Co.*, 179 Ill. App 152. The matter is considered to be within the discretion of the trial court and will not be upset by a reviewing court unless it appears that the discretion is clearly abused and the failure to reopen the proofs resulted in substantial injustice. *Rosehill Cemetery Co.* v. *City of Chicago,* 352 Ill. 11. *Morse* v. *Fuller,* 164 Ill. App. 85. We do not feel that the trial court abused its discretion in this case. Williams was available to testify during the trial and there appears to be no explanation why he was not introduced then. Further, his testimony, if given, could not materially have effected the outcome of the trial. Other witnesses for appellant had already testified that the property was worth far more than the appraisal of Williams, and we do not feel that the absence of his testimony prejudiced appellants.

Appellants next complain that the conduct of counsel for the Department was improper and inflammatory and prejudiced them in the eyes of the jury. The only item in the record of any substance that is pointed out by appellants to support this contention is an objection by the Department during appellants' final argument that it was "hysterical". No objection to this characterization of his style was made by appellant, and the Department's objection was overruled with the court commenting that it was within proper realm of argument. Since no objection was made by appellants at the time of trial, we will not consider it on review. *County of Cook* v. *Colonial Oil*

Corp., 15 Ill. (2d) 67, 75; *Forest Preserve District* v. *Kercher*, 394 Ill. 11, 25.

Finally, appellants claim that the jury was improperly instructed as to the law and their verdict resulted from the misconceptions created thereby. We have examined all the instructions tendered and given and feel that, in general, the jury was properly instructed as to the applicable law. The record shows that appellants tendered a total of 30 instructions and that all but five were refused. Appellants raise only two of these refused instructions on appeal, both dealing with the loss of access to Belvidere Road to the remainder of their lots. However, the evidence shows that the remaining property did not have direct access to Belvidere Road before the taking and the instructions, while proper statements of the law, were inapplicable to the factual situation and might have misled the jury.

It is well settled law in this state that in condemnation cases the verdict of the jury, when it has inspected the premises, will not be disturbed on review when that verdict is within the range of the evidence and does not appear to result from passion, prejudice or palpable mistake. *Department of Public Works and Buildings* v. *Christensen*, 25 Ill. (2d) 273, 276; *School Trustees* v. *LaSalle National Bank*, 21 Ill. (2d) 552, 556. Here the jury has viewed the property and its verdict is within the range of the evidence.

We also feel that appellants were granted a fair trial and that it would be incorrect to say that the verdict of the jury was a result of passion, prejudice, or palpable mistake. We therefore affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

DAVIS, *J.* and MORAN, *J.* concur.

14 (81401—1k -63)
Form 4

United States of America

State of Illinois
Supreme Court } ss.

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* eighth *day of* November *in the year of our Lord, one thousand nine hundred and* sixty-five *, within and for the State of Illinois.*

PRESENT: RAY I. KLINGBIEL, CHIEF JUSTICE

JUSTICE [redacted] JUSTICE WALTER V. SCHAEFER

JUSTICE HARRY B. HERSHEY JUSTICE BYRON O. HOUSE

JUSTICE ROY J. SOLFISBURG, JR. JUSTICE ROBERT C. UNDERWOOD

WILLIAM G. CLARK, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

Be It Remembered, *that, to-wit: on the* 17th *day of* November *19* 65 *, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:*

The Department of Public Works and Buildings of the State of Illinois, etc.,

Respondent

No. 39507 vs.

The First National Bank of Waukegan, as Trustee, under Trust No. 616, et al.,

Petitioners

Petition for Leave to Appeal from Appellate Court
Second District
66662
64 - 90

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

[redacted]

I, MRS. EARLE BENJAMIN SEARCY, *Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.*

In Witness Whereof, *I have hereunto subscribed my name and affixed the Seal of said court this* 23rd *day of* November *, 19* 65.

(SEAL)

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

Office-Supreme Court, U.S.
FILED
FEB 11 1966
JOHN F. DAVIS, CLERK

No. 1013

In the

Supreme Court of the United States

OCTOBER TERM, 1965.

ROY J. SMITH, Successor Trustee, et al.,
JOSEPH J. DROBNICK, MARK J. DROBNICK,
Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS, ETC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

JOSEPH J. DROBNICK, *pro se.*
MARK J. DROBNICK, *pro se.*
415 Madison Street
Waukegan, Illinois

The Scheffer Press, Inc., 118 South Clinton Street, Chicago, Illinois

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No.

ROY J. SMITH, Successor Trustee, et al.,
JOSEPH J. DROBNICK, MARK J. DROBNICK,
Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS, ETC.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

Petitioners, Joseph J. Drobnick and Mark Drobnick, respectfully pray that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, Second District and the order of the Supreme Court of Illinois denying the petitioners' petition for leave to appeal.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court, Second District is reported in abstract in 61 Ill. App. 2d 301 and is appended to the Appendix A in full in this petition. A timely petition was filed with the Illinois Supreme Court requesting leave to appeal, but such petition was denied without opinion (see Appendix B).

JURISDICTION.

The judgment of the Illinois Appellate Court, Second District was entered on the 28th day of July, 1965; and the Petition for Rehearing, which was filed in due time, was denied August 26th, 1965. A timely petition for leave to appeal was filed with the Illinois Supreme Court and was denied on November 17th, 1965. The jurisdiction of this Court is invoked under 28 U.S.C.A. ¶ 1257(3). The jurisdiction of this Court is further invoked under 28 U.S.C.A. 1358. Further, the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs (28 U.S.C.A. 1331).

As expert valuation witnesses for land owner testified value of land taken is $27,500.00 (Abst. 115-121).

QUESTION PRESENTED.

Can a State take private property from an individual citizen without proving the value of the property taken and yet comply with the due process clause of the 14th Amendment of the United States Constitution?

CONSTITUTIONAL PROVISION.

The only constitutional provisions, treaties, statutes, ordinances or regulations involved is the Fourteenth Amendment to Federal Constitution.

STATEMENT.

Part of the funds and money used to pay this condemnation judgment in this case comes from the Federal Government as Belvidere Road is a Federal Aid Route (No. 21) and Federal Aid Project (No. 21).

The Department of Public Works and Buildings of the State of Illinois filed a petition to condemn land on April 23rd and on June 18th, 1959 and for the taking of 5 parcels

of land designated herein as parcels 31, 33, 34, 35 and 36. The State also filed a Quick Take Motion and the Quick Take Compensation based on the State's own hired appraiser, back in 1959, testified on the dollar amount of valuations on these 5 parcels of land to-wit:

Parcel	Amount
31	$ 185.00
33	$ 543.98
34	$ 831.19
35	$ 499.99
36	$3,984.47
Total:	$6,044.71

The State admitted that the amount of land being taken amounted to about 22,720 square feet adjoining Belvidere Road. The proved zoning of parcels 31, 33, and 34 was residential. The proved zoning of parcels 35 and 36 was commercial. The land is all located in the City of Waukegan.

At a hearing to determine preliminary just compensation the Court entered an order finding just compensation in accordance with the uncontested evidence of the State, to-wit: in the sum of $6,044.71. On June 3rd, 1963, a jury was sworn and empanelled to try the cause. The jury rendered a verdict of $175.00 for tract 31, of $280.00 for tract 33, of $550.00 for tract 34, of $110.00 for tract 35, of $885.00 for tract 36. Judgments on these verdicts were entered on the 11th day of June, 1963.

As to the 10-foot strip that is described in the Petition to Condemn, the land is subject to a building line easement. And as to the value of the 10-foot strip, both of the expert valuation witnesses for the State said:

> "That the fair cash market value of the strip is subject to the rights created by the easement and therefore it is a thing *not saleable in the market* . . . and therefore the fair cash market value of the land being taken is $400.00" (Abst 103, 113).

The verdicts of the jury and the judgments entered thereon do not award the defendants the just compensation which the law requires.

REASONS FOR GRANTING THE WRIT.

The State has taken the petitioners' property in violation of the due process clause of the 14th Amendment of the United States Constitution because here the State has failed to introduce competent evidence on the value of the property taken and has failed to sustain their burden of proof and establish a *prima facie* case. The judgment for condemnation cannot stand-up in a Court of law where the State fails to establish a *prima facie* case.

The State applied the market value rule to the property being taken after all of the expert witnesses for the State said the property was a *thing not saleable* in the market. By doing this, the expert witnesses for the State disqualified themselves and their testimony should have been stricken on motion of the land owner. If it is true that the land being taken is not saleable in the open market because it is restricted by a building line and landscape easement, then "value to the owner" is the test that should have been applied to the property. *Kimball Laundry Co.* v. *U.S.*, 338 U.S. 1, 5, 69 Sp. St. Reporter 1438. Our Supreme Court in the *Kimball Laundry Co.* case said:

> "But where property is of the kind that it is seldom exchanged, it has no market price, and then recourse must be had to other means of ascertaining value,

> including value to the owner as an indication of value to other potential owners enjoying the same rights."

So here it was the duty of the expert valuation witnesses for the State to use "value to the owner" as the test of value once they announced in open Court that the property taken had no value in the market and it was a thing not saleable in the open market.

Chicago E. and L. R.R. Co. v. *Catholic Bishop of Chicago,* 119 Ill. 525 at 529.

Chicago R.R. Co. v. *Chicago,* 149 Ill. 457 at 461.

C. B. and Q. R.R. v. *Naperville,* 166 Ill. 87 at 92.

CONCLUSION.

For the foregoing reasons it is respectfully requested that this petition for a writ of certiorari be granted.

Respectfully submitted,

JOSEPH J. DROBNICK, *pro se*
MARK DROBNICK, *pro se*

MARK DROBNICK
415 Madison Street
Waukegan, Illinois.

APPENDIX "A"

OPINION OF THE APPELLATE COURT.

ABRAHAMSON, *P.J.*

This proceeding was originally filed in the County Court of Lake County, which court is now a part of the circuit Court of Lake County. The proceeding was brought to acquire 5 parcels of land for highway purposes. Defendants filed a motion to traverse and dismiss. After lengthy hearings, the trial court denied the traverse and entered orders permitting a "quick take" by the Petitioner. Subsequently, a jury trial was held on the issue of compensation and the total verdict was in the amount of $2,000.00.

Defendants appealed and stated their theory of the case as follows:

> "The respondent-appellants' theory of the case is that the Petitioner attacked the title and ownership of the Respondents' land being taken in the presence of the condemnation jury; the petitioner claimed title and ownership to a 80 foot highway prior to the filing of the petition to condemn; the petitioner claimed title to Belvidere Road under the doctrine of adverse user before and to a condemnation jury; the petitioner improperly described the area needed for road purposes in its petition to condemn; the petitioner improperly applied the market value rule to property which the petitioner characterized as having a special or particular use; and the Trial Court improperly struck the Cross-Petition; and the Attorney for the Condemnor presented prejudicial motions and prejudicial and improper arguments to the jury so that the verdicts rendered and the judgments entered thereon do not award to the Respondents the just compensation which the law requires."

Belvidere Road is an existing State Highway which runs Westerly from Waukegan in Lake County, Illinois. On or about May 1, 1958, Petitioner instituted condemnation proceedings in which Petitioner claimed a 30 foot easement and right of way for highway purposes on either side of the center line of Belvidere Road and sought to acquire an additional 10 feet on either side of Belvidere Road, increasing the overall right of way from 60 to 80 feet with the intention of replacing the two lane highway then existing along Belvidere Road with a four lane highway. The defendants are the owners of three parcels of land lying to the South of Belvidere Road and two parcels lying to the North.

At the hearing on the traverse, defendants contended that they owned fee simple, absolute title, to the center line of existing Belvidere Road, that the legal description of the taking should run to the center line without exception, and that compensation should be adjudicated accordingly. The trial court overruled the traverse, holding that petitioner had a right of way by prescription to sixty feet, (30 feet each side of the center line). Thereupon, a quick take order was entered adjulicating preliminary just compensation, the funds were deposited, an order vesting title was entered, and the defendants thereafter withdrew the deposit of $6,044.71.

Later, the defendants filed a cross-petition which then admitted that the petitioner had a right of way over sixteen feet on each side of the center line, and averred that defendants owned the next fourteen feet on each side of the center line and that petitioner sought to condemn and pay for only the outer ten feet on each side of the center line. Defendants prayed for damages to the fourteen foot strips on each side of the road adjacent to and beyond each parcel of the admitted sixteen foot right of way on

each side of the centerline of Belvidere Road. They also sought compensation for the taking of the ten foot parcels on each side of the road and damage to the remainder generally.

No draft order had been entered formalizing the Court's ruling as to the existing right of way at the conclusion of the traverse hearing. Because of the absence of a formal court order spelling out the Court's finding that the petitioner had an easement by prescription over sixty feet (30 feet each side of the center line), and upon the insistence of the defendants that this issue be relitigated and complete proofs required, the court ruled that it would "reconsider the question of whether an easement was or was not established and require proofs to be submitted in the present trial on the question as to whether or not there was a thirty foot easement (on each side of the center line) established by the State." Petitioner suggested that evidence on that issue be taken outside the presence of the jury, but defendants did not join in this request. Adequate testimony was presented before the jury to establish that the Condemnor had an easement by prescription over sixty feet. The trial court then struck the cross-petition as to the fourteen feet on the basis of the evidence and precluded any defense testimony as to the damage thereto.

Defendants, for their first two contentions, argue that the court erred in permitting petitioner to introduce evidence attacking defendants' title to the various strips of land involved. Defendants correctly state that the law is that in condemnation cases the jury is impanalled merely to ascertain and determine the just compensation to be awarded to the owners of the property being taken or damaged and that no issue of ownership or title can be presented to the jury. The question of title, if any, is

preliminary to the submission of the question of damages to the jury and must be determined before the jury is impanelled. *Metropolitan El. Ry. Co.* v. *Eschner,* 232 Ill. 210; *Chic. and Mil. Elec. Ry. Co.* v. *Diver,* 213 Ill. 26.

The defendants contend that the Court erred in striking the counter-petition as to their ownership of the fourteen foot strips described in said petition and complain that evidence on this issue was presented to the jury. It is clear from the record in this case that before submitting the case to the jury the Court struck the counter-petition as to the fourteen feet and no evidence of title was submitted to the jury. That plaintiffs had a pre-existing right of way over these fourteen foot strips was properly determined by the Court. *City of Highland Park* v. *Driscoll,* 24 Ill. 2d 281.

Petitioner never questioned that defendants owned fee simple, absolute title to the center line of Belvidere Road as it existed as to date of the filing of these proceedings, but claimed an easement for highway purposes. The question of the easement was not submitted to the jury for determination. The trial judge in dismissing the cross-petition as to the fourteen foot strips made this determination. Although the propriety of this procedure may be questioned, the failure of the defendants to join in the petitioners' request that the matter be heard outside the presence of the jury leads us to conclude that this was not prejudicial. However, if we view such procedure as prejudicial error, even then such error was induced by defendants and they cannot complain because of it. *City of Waukegan* v. *Stanczak,* 6 Ill. 2d 594, 608.

The court did not err in striking the cross-petition. Defendants contend that the taking of the additional ten foot strip beyond the fourteen foot strip described in the cross-petition is tantamount to the taking of the fourteen

foot strips. The court properly determined that the fourteen foot strips had been subject to an easement for highway purposes by prescription for years and the proofs so disclosed that the taking of the additional ten foot strips for highway purposes expanded the highway and in no way affected the interest of the defendants in the property described in the cross-petition. *City of Highland Park* v. *Driscoll, supra.*

Error is urged in the admission of a County zoning ordinance requiring that all subdivisions adjoining State roads shall provide for a minimum width of not less than one hundred feet, for highway purposes. The property adjoining had not been subdivided and was for the most part vacant and unimproved. Petitioners' proof indicated the highest and best use of the premises was for a residential subdivision. It appears that the ordinance relates to and is pertinent to this issue and was properly admitted. *City of Chicago* v. *Pridmore,* 12 Ill. 2d 447, 451.

Defendants argue that the landscape or planter easement placed the premises in a "special use" catagory and, therefore, the market value test should not apply. Defendants failed to offer any proof of value predicated on a "special use" theory nor does there appear any reason to conclude that merely because of the existence of the planter easement a special use is created. *Peo. Gas Light & Coke Co.* v. *Buckles,* 24 Ill. 2d 520, 531 and 532. Generally exceptions occur when property has special capabilities which make it unmarketable as its true value due to unique improvements, such as a church, a school or a railroad terminal. *Housing Authority* v. *Kosydor,* 17 Ill. 2d 602, 605 and 606.

Defendants also contend that counsel for the petitioner was guilty of improper and prejudicial conduct during the trial and that his arguments at the close were inflamma-

tory and prejudicial. Defendants contend it was prejudicial for petitioner's counsel, on cross examination, to ask one of the defendants how long he had been a land speculator. This was permissive in that defendant testified in direct examination in response to questions from his counsel as follows:

> "Q. In your business as a real estate broker, do you buy and sell land?
>
> A. Yes. We have been buying and selling land for our investors and for our own speculative account for well over twenty years, in fact, some of it almost forty years."

Defendants also object that petitioner's attorney charged one of the defendants and the attorney for the other defendants with being in contempt in connection with certain testimony that the defendant in question had given. The record indicates that on the occasion in question the defendant and his attorney persisted in seeking to introduce evidence to which the trial court had sustained objections and because of the persistence of the defendant and his attorney in this matter we deem it not prejudicial for petitioner's attorney to charge the attorney or the defendant with being in contempt.

Defendant also states that the petitioner attempted to show negotiations toward a settlement of this matter. The record fails to show any reference to negotiations and we find no prejudice to the defendant on this ground.

We have read the closing arguments of counsel for petitioner and do not find as contended by defendants, that petitioner's arguments were in any way inflammatory or prejudicial.

Finally, the record discloses that the jury verdict was well within the range of the testimony presented. The Illinois Courts on review have refused to disturb the verdict of the jury in condemnation cases, despite some irregularities in proceedings. Here the jury has viewed the premises and no prejudice or clear and palpable mistake is shown. *Dept. of Public Works* v. *Drobnick,* 14 Ill. 2d 28; *Dept. Public Works & Bldg.* v. *Bloomer,* 28 Ill. 2d 267.

For the reasons above stated the decision of the lower court is affirmed.

JUDGMENT AFFIRMED.

MORAN, *J.* and DAVIS, *J.* concur.

United States of America

State of Illinois
Supreme Court
} ss.

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* eighth *day of* November *in the year of our Lord, one thousand nine hundred and* sixty-five *, within and for the State of Illinois.*

PRESENT: RAY I. KLINGBIEL, CHIEF JUSTICE

JUSTICE [redacted] JUSTICE WALTER V. SCHAEFER

JUSTICE HARRY B. HERSHEY JUSTICE BYRON O. HOUSE

JUSTICE ROY J. SOLFISBURG, JR. JUSTICE ROBERT C. UNDERWOOD

WILLIAM G. CLARK, ATTORNEY GENERAL

ROBERT G. MILEY, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

Be It Remembered, *that, to-wit: on the* 17th *day of* November *19* 65 *, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:*

The Department of Public Works and Buildings of the State of Illinois, etc.,

Respondent

No. 39544 vs.

Roy J. Smith, Successor Trustee, et al.,

Petitioners

Petition for Leave to Appeal from Appellate Court
Second District
15148
64 - 51

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

[redacted]

I, MRS. EARLE BENJAMIN SEARCY, *Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.*

In Witness Whereof, *I have hereunto subscribed my name and affixed the Seal of said court this* 23rd *day of* November *, 19* 65.

(SEAL)

/s/ Mrs. Earle Benjamin Searcy
Clerk,
Supreme Court of the State of Illinois.

Supreme Court of the United States

October Term, 1935.

No. 313

THE FIRST NATIONAL BANK OF WAUKEGAN, as Trustee under Trust No. 316 et al., JOSEPH J. DEOBNICK and MARK J. DEOBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS, etc.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, AND NO. 313 SUPREME COURT OF ILLINOIS

AND

BRIEF IN SUPPORT THEREOF

[illegible]

[illegible]

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 1012

THE FIRST NATIONAL BANK OF WAUKEGAN as Trustee under Trust No. 616 et al., JOSEPH J. DROBNICK and MARK J. DROBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION

The respondent, Department of Public Works and Buildings of the State of Illinois, respectfully prays that a writ of certioari, to review the judgment of the Illinois Appellate Court, Second District, and the Order of the Supreme

Court of Illinois denying petitioner's petition for leave to appeal, be denied.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court, Second District, is reported in full in 61 Ill. App. 2d, 78, and is appended to Appendix "A" in full in this opinion. A petition filed with the Illinois Supreme Court requesting leave to appeal was denied, without opinion, and is appended to the petition as Appendix "B". Both Appendix "A" and "B" correctly state the opinion of the Illinois Appellate Court, Second District, and the Order of the Illinois Supreme Court denying petition for leave to appeal.

JURISDICTION.

The jurisdictional requisites are not adequately set forth in the petition. The petitioner seeks to invoke jurisdiction under 28 USC 1257(3); 28 USC 1358; and 28 USC 1331.

Concerning 28 USC 1257(3), the validity of a treaty or statute of the United States is not drawn in question, nor is the validity of the State statute drawn in question, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, nor is there any title, right, privilege or immunity that is specifically set up or claimed under the constitution, treaties or statutes of, or commission held or authority exercised under the United States, that can be appropriately claimed.

Concerning 28 USC 1358, this case is not a federal condemnation proceeding, nor was the condemnation of the subject real estate for the use of the United States or its Departments or agencies, and this section is not applicable to the jurisdictional requisites of this Court governing review in writ of certiorari.

Concerning 28 USC 1331, this section deals with the original jurisdiction of Federal District Courts and is not applicable to the jurisdictional requisites of this Court governing review on writ of certiorari from state court proceedings.

Further, petitioner's statement that the matter in controversy exceeds the jurisdictional amount under Section 1331 has no application herein and does not invoke jurisdiction of this Court.

Finally, no federal question of substance was raised in the State court, timely or properly, so as to give the Supreme Court of the United States jurisdiction on writ of certiorari, nor as provided by Rule 19 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED.

Will the Supreme Court of the United States take jurisdiction on a writ of certiorari and rule on the propriety of an instruction in a State court condemnation proceeding which has heretofore been passed upon by the reviewing courts of the State?

STATUTE AND REGULATION INVOLVED.

The petition fails to set forth any appropriate statute, regulation, constitutional provision, treaty or ordinance, and merely refers to the Fourteenth Amendment of the Federal Constitution in general terms.

STATEMENT OF THE CASE.

Petitioner's reference to the amount of the preliminary finding of just compensation is not material, insofar as Chapter 47, Section 2.2(d), Ill. Rev. Stats., 1965, provides:

> Such preliminary finding of just compensation, and any deposit made or security provided pursuant thereto, shall not be evidence in the further proceedings to ascertain finally the just compensation to be paid, and shall not be disclosed in any manner to a jury impaneled in such proceedings; and if appraisers have been appointed as herein authorized, their report shall not be evidence in such further proceedings, but the appraisers may be called as witnesses by the parties to the proceedings.

Further, Chapter 47, Section 2.5, Ill. Rev. Stats., 1965, provides:

> Neither the petitioner nor any party interested in the property, by taking any action authorized by Sections 2-1 to 2.4, inclusive, of this Act, shall be prejudiced in any way in contesting, in later stages of the proceeding, the amount to be finally ascertained to be just compensation.

Moreover, the law in Illinois holds that valuations made by appraisers in preliminary proceedings made for the purpose of insuring an adequate deposit for the protection of the property owner in connection with the immediate vesting of title cannot serve as a touchstone in measuring the adequacy of the verdict, nor as to provide a guaranteed minimum. (*Department of Public Works* v. *Christensen*, 25 Ill. 2d, 273, 276-277.)

Further, the subject highway improvement, is a state highway improvement notwithstanding that Illinois may be reimbursed by the federal government because this is a federal aid project. Petitioner's reference to federal funds, therefore, is not material herein.

REASONS FOR DENYING THE WRIT.

The jurisdictional requisites are not adequately set forth in the petition.

The issue in this case is the propriety of a State court instruction in a condemnation proceeding which has heretofore been passed upon by the reviewing courts of Illinois.

A claim that a State court condemnation proceeding has deprived an owner of property of just compensation and due process and that a constitutional right has been violated does not present a federal question where the State court had jurisdiction of the parties and subject matter and all questions presented have been raised in State courts and review had been accorded. (*Chance* v. *County Board of School Trustees of McHenry County, Illinois,* CA Ill. 1964, 332 Fed. 2d, 971.)

Nor does the fact that the State government may be reimbursed by the federal government for work done in connection with this State highway improvement have any application herein nor does it give rise to a federal question. Questions arising from the taking of property by condemnation for State purposes are matters for determination by State rather than federal courts and the contention that a land owner was deprived of his property without due processes of law is insufficient to invoke "federal question" jurisdiction of federal courts, even though the federal government is subsidizing the acquisition pro-

gram. (*Harrison-Halsted Community Group, Inc.* v. *Housing and Home Financing Agency*, C.A. Ill. 1962; 310 Fed. 2d, 99; Ceriorari denied, 83 S. Ct. 1297; 373 U. S. 914; 10 L. Ed. 2d, 414.)

Further, it is submitted that a federal question of substance is not presented by the petitioner and there has been no decision by a State court of a federal question of substance not heretofore determined by this court or decided in a way probably not in accord with applicable decisions of this Court, as set forth by Rule 19(a) of the Rules of the Supreme Court of the United States.

Further, as to the particular instruction, the argument advanced by petitioner is unreasonable and illogical. Petitioner argues that this instruction prevents the jury from compromising, since it instructs that in arriving at their verdict, it is not proper for the jury *simply* to average or compromise the testimony. The instruction simply states that the jury should not avenge or compromise the testimony of the witnesses on the question of land values and damage to the remainder. Further, the instruction proceeds in the following sentence to instruct the jury that they are not precluded from bringing in *any* verdict that is *within the range of the testimony.* Finally, the instruction is valid under Illinois law. (*I. I. & M. Ry. Co.* v. *Freeman*, 210 Ill. 270, 278.)

Petitioner fails to cite any decision of this Court or any other court which is in conflict with the decision sought to be reviewed. The matter of whether this particular instruction in a civil case is argumentative is hardly of sufficient importance to be reviewed by this Court.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
Suite 900, 160 North La Salle Street,
Chicago, Illinois 60601 (FInancial 6-2000,
Attorney for Respondents.

HAROLD G. ANDREWS,
DONALD T. MORRISON,
Special Assistant Attorneys General,
Of Counsel.

FILED

MAR 12 19

IN THE

Supreme Court of the United States

October Term, 1965.

No. 1013

BOY J. SMITH, Successor Trustee, et al.,
JOSEPH J. DROBNICK, MARK J. DROBNICK,
Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago 1, Illinois (FI 6-2000),
Attorney for Respondents.

HAROLD G. ANDREWS
DONALD T. MORRISON
Special Assistant Attorneys General,
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1013

ROY J. SMITH, Successor Trustee, et al.,
JOSEPH J. DROBNICK, MARK J. DROBNICK,

Petitioners,

vs.

THE DEPARTMENT OF PUBLIC WORKS AND BUILDINGS OF THE STATE OF ILLINOIS ETC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT AND TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION

The respondent, Department of Public Works and Buildings of the State of Illinois, respectfully prays that a writ of certioari, to review the judgment of the Illinois Appellate Court, Second District, and the Order of the Supreme

Court of Illinois denying petitioner's petition for leave to appeal, be denied.

OPINIONS BELOW.

The opinion of the Illinois Appellate Court, Second District, is reported in 61 Ill. App. 2d, 301, and is appended to Appendix "A" in full in this opinion. A petition filed with the Illinois Supreme Court requesting leave to appeal was denied, without opinion, and is appended to the petition as Appendix "B". Both Appendix "A" and "B" correctly state the opinion of the Illinois Appellate Court, Second District, and the Order of the Illinois Supreme Court denying petition for leave to appeal.

JURISDICTION.

The jurisdictional requisites are not adequately set forth in the petition. The petitioner seeks to invoke jurisdiction under 28 USC 1257(3); 28 USC 1358; and 28 USC 1331.

Concerning 28 USC 1257(3), the validity of a treaty or statute of the United States is not drawn in question, nor is the validity of the State statute drawn in question, on the ground of its being repugnant to the Constitution, treaties or laws of the United States, nor is there any title, right, privilege or immunity that is specifically set up or claimed under the constitution, treaties or statutes of, or commission held or authority exercised under the United States, that can be appropriately claimed.

Concerning 28 USC 1358, this case is not a federal condemnation proceeding, nor was the condemnation of the subject real estate for the use of the United States or its Departments or agencies, and this section is not applicable to the jurisdictional requisites of this Court governing review in writ of certiorari.

Concerning 28 USC 1331, this section deals with the original jurisdiction of Federal District Courts and is not applicable to the jurisdictional requisites of this Court governing review on writ of certiorari from the state court proceedings.

Further, petitioner's statement that the matter in controversy exceeds the jurisdictional amount under Section 1331 has no application herein and does not invoke jurisdiction of this Court.

Finally, no federal question of substance was raised in the State court, timely or properly, so as to give the Supreme Court of the United States jurisdiction on writ of certiorari, nor as provided by Rule 19 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED.

Will the Supreme Court of the United States take jurisdiction on a writ of certiorari and rule on the propriety of the application by the condemnor of the "Market value" rule to property being taken in a State court condemnation proceeding, which issue has heretofore been passed upon by the reviewing courts of the State?

STATUTE AND REGULATION INVOLVED.

The petition fails to set forth any appropriate statute, regulation, constitutional provision, treaty or ordinance, and merely refers to the Fourteenth Amendment of the Federal Constitution in general terms.

STATEMENT OF THE CASE.

Petitioner's reference to the amount of the preliminary finding of just compensation is not material, insofar as Chapter 47, Section 2.2(d), Ill. Rev. Stats., 1965, provides:

> Such preliminary finding of just compensation, and any deposit made or security provided pursuant thereto, shall not be evidence in the further proceedings to ascertain finally the just compensation to be paid, and shall not be disclosed in any manner to a jury impaneled in such proceedings; and if appraisers have been appointed as herein authorized, their report shall not be evidence in such further proceedings, but the appraisers may be called as witnesses by the parties to the proceedings.

Further, Chapter 47, Section 2.5, Ill. Rev. Stats., 1965, provides:

> Neither the petitioner nor any party interested in the property, by taking any action authorized by Sections 2-1 to 2.4, inclusive, of this Act, shall be prejudiced in any way in contesting, in later stages of the proceeding, the amount to be finally ascertained to be just compensation.

Moreover, the law in Illinois holds that valuations made by appraisers in preliminary proceedings made for the purpose of insuring an adequate deposit for the protection of the property owner in connection with the immediate vesting of title cannot serve as a touchstone in measuring the adequacy of the verdict, nor as to provide a guaranteed minimum. (*Department of Public Works* v. *Christensen*, 25 Ill. 2d, 273, 276-277.)

Further, the subject highway improvement, is a state highway improvement notwithstanding that Illinois may be reimbursed by the federal government because this is a federal aid project. Petitioner's reference to federal funds, therefore, is not material herein.

REASONS FOR DENYING THE WRIT.

The jurisdictional requisites are not adequately set forth in the petition.

The issue in this case is the propriety of the application by condemnor of the "Market value" rule to property being taken in a State court condemnation proceeding, which issue has heretofore been passed upon by the reviewing courts of Illinois.

A claim that a State court condemnation proceeding has deprived an owner of property of just compensation and due process and that a constitutional right has been violated does not present a federal question where the State court had jurisdiction of the parties and subject matter and all questions presented have been raised in State courts and review had been accorded. (*Chance* v. *County Board of School Trustees of McHenry County, Illinois,* CA Ill. 1964, 332 Fed. 2d, 971.)

Nor does the fact that the State government may be reimbursed by the federal government for work done in connection with this State highway improvement have any application herein nor does it give rise to a federal question. Questions arising from the taking of property by condemnation for State purposes are matters for determination by State rather than federal courts and the contention that a land owner was deprived of his property without due processes of law is insufficient to invoke "federal question" jurisdiction of federal courts, even though the federal government is subsidizing the acquisition pro-

gram. (*Harrison-Halsted Community Group, Inc.* v. *Housing and Home Financing Agency,* C.A. Ill. 1962; 310 Fed. 2d, 99; Ceriorari denied, 83 S. Ct. 1297; 373 U. S. 914; 10 L. Ed. 2d, 414.)

Further, it is submitted that a federal question of substance is not presented by the petitioner and there has been no decision by a State court of a federal question of substance not heretofore determined by this court or decided in a way probably not in accord with applicable decisions of this Court, as set forth by Rule 19(a) of the Rules of the Supreme Court of the United States.

The principal case cited by the petitioner, *Kimball Laundry Co.* v. *U. S.,* 338 U. S. 1, is easily distinguished and has no application and fails to demonstrate any conflict of decisions by this court. The Kimball Laundry case involved condemnation proceedings by the United States to condemn the temporary use of the laundry wherein the laundry was required to suspend service to its regular customers and which, under the circumstances, required compensation for the temporary taking from year to year. Under such circumstances the Supreme Court simply recognized that short-term takings of property might entail considerations not present where complete title had been taken, and that rules developed where the owner's interest in the property has been irrevocably severed should not be forced to fit the more complex consequences of a piecemeal taking of successive short-term interests, since such taking may involve compensable elements that in the nature of things are not present where the whole is taken.

Similarly, the three Illinois cases cited by petitioner are easily distinguished. They have no application herein and fail to demonstrate any conflict of decisions.

Further, as to the particular question, the argument advanced by petitioner is unreasonable and improper.

The ten foot strip of land taken in this proceeding was burdened with an old "Planter" easement for landscaping purposes running to the condemnor. In valuing the part taken condemnor's witnesses testified that they considered this easement and its effect on the value of the land.

The petitioners herein argue that such restrictions place the lands taken in the "Special use" category, and therefore the market value test would not apply. The argument is specious.

Certain classes of property, such as cemeteries and railway stations, are not commonly bought and sold in the market place. In such cases Illinois law then permits measures of value other than the familiar fair cash market value test, such as cost, amount of business done, or intrinsic value. (*City* v. *Farwell,* 286 Ill. 415.) Where property falls in this category, the market value test is not necessarily excluded, but the restrictions on the admissions of other kinds of evidence of value are relaxed. (*Ill. Cities Water Co.* v. *City of Mt. Vernon,* 11 Ill. 2d, 547; *Sanitary Dist.* v. *P. FT. W. & C. Ry. Co.,* 216 Ill. 575.)

Almost all real estate is burdened with easements for roads, sidewalks, utilities or other similar purposes, with zoning restrictions, with building lines and restrictions and other governmental and quasi-governmental restrictions, controls and permissive uses. Illinois has consistently applied the market value test, as distinguished from the value to the owner for his particular purposes, or its value to the condemnor for some particular use. The only exception to the rule is the so-called "special use" property which, because of *unique improvements,* give it special

capabilities which make it unmarketable, such as a church, school or railroad terminal. (*Peo. Gas Light & Coke Co.* v. *Buckles,* 24 Ill. 2d, 520, 532.)

The subject property in the case at bar is not "special use" property because it has *no unique improvements* which give it *special capabilities* which in turn make it unmarketable. It was, for the most part, ordinary vacant land. All of the part taken was vacant. If this property is said to be in the "Special use" category because of a "Planter" easement over the front ten feet, it would lead to the irrational conclusion that all property so burdened, even as to a small part, with any easement or restriction of record is "Special use" property. If such were the case we would have little, if any, use for the market value test in eminent domain proceedings.

Petitioner fails to cite any decision of this Court, or any other court, which is in conflict with the decision sought to be reviewed. The question herein is hardly of sufficient importance to be reviewed by this Court, and such matters are not of general concern, but are by their nature peculiar to the factual situations presented in the individual cases.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

WILLIAM G. CLARK,
Attorney General of the State of Illinois,
Suite 900, 160 North La Salle Street,
Chicago, Illinois 60601 (FInancial 6-2000,
Attorney for Respondents.

HAROLD G. ANDREWS,
DONALD T. MORRISON,
Special Assistant Attorneys General,
Of Counsel.